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**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

PREMIER BANK, a Minnesota banking  
corporation,

Plaintiff,

vs.

RENO FLIGHT SERVICES, INC., a Nevada  
corporation, DOES I-X, inclusive, and ROE  
COMPANIES XI-XX, inclusive,

Defendants.

Case No.: 2:13-cv-01533-GMN-CWH

**ORDER**

Pending before the Court is the Amended Motion to Dismiss Second Amended Complaint (ECF No. 40) filed by Defendant Reno Flight Services, Inc. ("Defendant"). Plaintiff Premier Bank ("Plaintiff") filed a Response (ECF No. 41), and Defendant filed a Reply (ECF No. 42).

**I. BACKGROUND**

Plaintiff is a Minnesota banking corporation. Defendant is a Nevada corporation which operates under a Federal Aviation Administration ("FAA") certificate as an air charter, air ambulance, and air freight company. Plaintiff brings this action for two counts of conversion,

1 trespass to chattels, negligence, and breach of contract (alternative to counts I through IV) against  
 2 Defendant in connection to an aircraft owned by Plaintiff's borrower, First Star, Inc. ("First Star"),  
 3 which was allegedly damaged by Defendant as outlined in the Second Amended Complaint. The  
 4 aircraft constituted the Plaintiff's collateral for its loan to First Star, so Plaintiff alleges that  
 5 Defendant's actions caused Plaintiff to suffer the destruction of its collateral.

## 6 **II. LEGAL STANDARD**

7 A court should not dismiss a complaint for failure to state a claim "unless it appears beyond  
 8 doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to  
 9 relief." *Doe v. United States*, 419 F.3d 1058, 1062 (9th Cir. 2005) (quoting *Conley v. Gibson*, 355  
 10 U.S. 41, 45-46 (1957)). When reviewing a motion to dismiss for failure to state a claim, "the court  
 11 must construe the complaint in the light most favorable to the plaintiff, taking all allegations as true  
 12 and drawing all reasonable inferences from the complaint in [the plaintiff's] favor." *Id.* Claims  
 13 should not be dismissed "unless it is certain that the law would not permit the requested relief even  
 14 if all the allegations in the complaint were proven true." *Colaprico v. Sun Microsystems, Inc.*, 758  
 15 F.Supp. 1335, 1337 (N.D. Cal. 1991).

## 16 **III. DISCUSSION**

### 17 **a. Statute of Limitations**

18 In its Motion to Dismiss, Defendant argues that Plaintiff's tort claims are subject to  
 19 Nevada's three-year period of limitations, and therefore they are time barred. (Mot. To Dismiss  
 20 5:5-7:18, ECF No. 40.) The crux of Defendant's argument is that the lease between First Star and  
 21 Defendant for the aircraft in question (the "Lease") contains a choice of law provision: "This Lease  
 22 shall be construed pursuant to the laws of the State of Nevada and any action to enforce it shall be  
 23 brought in the state [sic] of Nevada." (*Id.* at 5:9-12.) In its response, Plaintiff argues that Oregon's  
 24 six-year limitations period applies to these claims, and therefore they are not time barred.  
 25 (Response to Mot. To Dismiss 7:1-10:12, ECF No. 41.)

26 This Court is not persuaded by Defendant's arguments. Oregon's statute of limitations may  
 27 control Plaintiff's tort claims. Oregon law may apply to the tort claims because Oregon is the state  
 28 most closely connected to both the alleged conduct at issue in this case and the place where the

1 alleged damage may have occurred. Plaintiff alleges that the acts and omissions set forth in the  
2 Second Amended Complaint occurred in Oregon. (Response to Mot. To Dismiss 8:22-9:22, ECF  
3 No. 41.) Plaintiff further alleges that Defendant's primary place of business is in Oregon, that  
4 Defendant signed the Lease in Oregon, and that the parties agreed that the aircraft shall be based in  
5 Oregon.

6 For these reasons, this Court finds that Oregon's six-year limitations period may apply to  
7 Plaintiff's tort claims, and therefore the motion to dismiss for the statute of limitations is denied.

8 **b. Sufficiency of Pleadings**

9 In its Motion to Dismiss, Defendant argues that Plaintiff's claims each fail to state a claim  
10 under Nevada law. Plaintiff argues that Oregon law applies to its claims, and furthermore that its  
11 claims were pleaded under both Oregon and Nevada law. Because there may be a basis for  
12 application of Oregon law, the court denies the motion to dismiss.

13 But whether under Oregon or Nevada law, Plaintiff's claims are sufficiently pleaded. The  
14 allegations in Plaintiff's Complaint, if taken as true and making all appropriate inferences in favor  
15 of Plaintiff, are sufficient to support Plaintiff's claims.

16 **IV. CONCLUSION**

17 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Defendant's Amended  
18 Motion to Dismiss Second Amended Complaint (ECF No. 40) is **DENIED IN ITS ENTIRETY**.

19 **DATED** this 3rd day of October, 2014.

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Gloria M. Navarro, Chief Judge  
United States District Court

1 Respectfully submitted,

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